

**STILLWATER COUNTY PLANNING BOARD
MINUTES OF MEETING**

Wednesday, October 6th, 2021 at 7:00p.m.
Stillwater County Pavilion
328 5th Avenue N., Columbus, MT

BOARD MEMBERS PRESENT: Ray Karls, Dan Sayer, Curtis Jacobs, Bob Van Oosten, Gary Enstrom, Steve Arnold, and Jerry Edwards

BOARD MEMBERS NOT PRESENT: Carolyn Hutson

STAFF: Forrest Mandeville and Christine Baker

OTHERS: Tom Kelly, Myron Gross, Nancy Gross, Travis West, Keith Holbert, Deb Peters, Lynn Johnson

I. CALL TO ORDER: Ray Karls, President of the board, called the meeting to order at 7:00 p.m.

A. Disclosures of Conflicts of Interest and Ex-Parte Communications. Nothing at this time.

II. MINUTES:

A. Minutes: Gary made a motion to approve the draft minutes from the September 1st, 2021 County Planning Board Meeting, Bob seconded; with all in favor, motion passed.

III. NEW BUSINESS: PUBLIC HEARING

A. Holbert Subsequent Minor Subdivision:

Forrest gave an overview to the Board on the proposed 2 lot Holbert Subsequent Minor Subdivision. Tom Kelly of North Star Land Services, on behalf of James Keith and Kathleen M. Holbert, submitted a preliminary plat application and materials for the proposed Amended Plat of Holbert Subdivision Lot 1-A Document Number 375420. The proposed two-lot subdivision would create lots of 6.93 acres (Lot 1-A-2) and 20.764 acres (Lot 1-A-1). The subdivision is located on McNaley Road, on the northeast side of the intersection with Whitebird Creek Road, approximately 1.5 miles south of the intersection of Highway 78. The property is legally described as Lot 1-A of Amended Plat 375420 located in Section 19, T 3 S, R 20 E, and Section 24, T 3 S, R 19 E, P.M.M., Stillwater County.

The property was originally created as part of Holbert Subdivision, therefore this development is a subsequent minor subdivision which is reviewed as a major subdivision, except that the requirement to submit an Environmental Assessment is waived if the subdivision would create three lots or less (Section II.D.6.). Existing development on the property consists of a single-family

home, with associated improvements such as a garage/shop, driveway from McNaley Road, well, and septic. The existing development will be on Lot 1-A-1, while Lot 1-A-2 will create a site for a new home.

Beartooth Electric Co-op is the electrical provider in the area and, according to the applicant, has requested a 20-foot wide easement for the power line to the existing home on Lot 1-A-1. This easement will need to be shown on the final plat (Section IV.8.M.).

McNaley Road provides access to the subdivision. McNaley Road is County-owned and maintained and is gravel in the area. McNaley Road intersects with Whitebird Creek Road on the east west side of the subdivision, which is a paved County road. There is an existing driveway from McNaley Road serving the home on Lot 1-A-1. A new approach will need to be constructed to serve the new lot and should follow the specifications of the County Road and Bridge Department.

Recommended Conditions of Approval:

1. Filing of the final plat shall be subject to review and approval by DEQ and the County Sanitarian of any new water, wastewater, storm water drainage, and solid waste provisions, as applicable (Section II.C.6).
2. The final plat shall contain a statement that legal and physical access is provided to each lot per MCA 76-3-608 (3)(d) and Section II.B.4.p.
3. Utility easements shall be provided and dimensioned as required by utility companies and as provided for in Section IV.M. on the final plat.
4. Per Section IV.M.8., the final plat shall show the location of all existing and required utility easements, and must include the following statement: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement" to have and hold forever."
5. A Subdivision Improvements Agreement shall be prepared as required in the Subdivision Regulations and filed with the plat. Minor format changes may be required to ensure uniformity and compliance with the Subdivision Regulations.
6. An executed Weed Management Plan must be attached to the SIA (Section IV.C.)
7. Consent to the subdivision from lien holders will be required if any liens on the property have not been satisfied by time of final plat submittal (Section II.C.6).
8. Subdivision should be renamed to a more concise name.
9. The final plat shall be submitted in compliance with Section II.C.

Forrest concluded his report. Ray opened the public hearing and public comment. With no public comment, Ray closed the public hearing.

Dan made a motion to approve the Holbert Subsequent Minor Subdivision with Conditions, Jerry seconded; with all in favor, motion passed.

B. Hillbrook Subdivision Phase 4 Variance Request:

Forrest presented the variance request and planning department's recommendation to the Board. Engineering West, on behalf of Myron and Nancy Gross, has submitted a variance request from design standards for the Hillbrook Estates Major Subdivision, Fourth Phase. Specifically, the

applicant is asking for relief from the requirement to pave internal roads, and for the County to allow roads to be unbuilt with easements serving potential future development.

The proposed 14 lot subdivision is adjacent to and a continuation of the previous phases of the Hillbrook Estates Major Subdivision development. The subdivision, contains 41.5 acres, 11 single-family residential lots, 3 multi-family residential lots, and two parkland/trail areas.

The proposed subdivision is located east of Park City on Old Mill Road north of the previous phases of Hillbrook Estates Major Subdivision. Access is provided from Old Mill Road (to an existing home), and from Elm Drive and Silverado Drive; the legal description is Lot 40, Hillbrook Estates Major Subdivision, First Phase, Plat 357758, in Section 28, T2S, R23E, Stillwater County, Montana. This subdivision was reviewed last year, and was approved, subject to conditions, by the Commission on October 20, 2020.

The Planning Board is tasked under the Subdivision Regulations with holding a public hearing on the variance, and making a recommendation to approve, approve with conditions, or deny the requested variance to the Stillwater County Commissioners based upon the criteria outlined below. The Planning Board shall also make findings related to the variance request. Under the adopted Subdivisions Regulations (II-G.1.b) a variance cannot be granted unless there are findings based upon evidence presented in each specific case that:

1. The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property;
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
3. There are special and unusual circumstances or conditions affecting said property such that the strict application of the regulations from which the variance is requested would deprive the owner of reasonable use of said property and is not the mere grant of a privilege, or because of particular environmental features or characteristics (which may include viewsheds, specimen trees, wetlands, historic sites, etc.), physical surroundings, shape, or topographical conditions of the specific property involved or the nature of adjoining properties warrant relief from the standard in question;
4. The variances will not in any manner vary the provisions of any other regulations, ordinances, or plans adopted by the AGB;
5. The variance is necessary for the preservation and enjoyment of a substantial property right of the owner;
6. The granting of the variance would not be in conflict with the intent of the subdivision and platting provisions of these Regulations;
7. The hardship is not a result of the applicant's own actions or from previous actions of the applicant;
8. The granting of the variance would not be in conflict with the general purpose and intent of Growth Management Plans of Columbus and Stillwater County, any zoning regulations, or any other applicable ordinances and resolutions of the AGB;
9. The subdivision would be better designed if the variance were granted;
10. The requested variance is the minimum variance needed;
11. The variance will not cause an increase in public costs.

Compliance Review/Findings Summary: (Section references are to the Stillwater County Subdivision Regulations unless otherwise noted)

Section IV.I.4 of the Stillwater County Subdivision Regulations states, in part, that "All major subdivisions are required to pave internal roads." The applicant is requesting relief from this

portion of the regulations, and to allow the northernmost portions of Elm Drive and Silverado Drive to be unbuilt within easements. There is no provision in the subdivision regulations allowing roads to be unbuilt prior to final plat unless secured through an improvement agreement with financial security, such as a letter of credit.

This subdivision was conditionally approved by the County Commission on October 20, 2020, based on a recommendation from the County Planning Board. Condition number 11 states: "All proposed roads shall be built to County standard with an asphalt surface. Silverado Drive shall be built from the intersection with Autumn Road to the north terminus of the road easement as shown on the preliminary plat. Elm Drive shall be built through the subdivision to the north terminus of the road easement."

Condition number 11 was based on findings, which state: Access for the subdivision is provided by Elm Drive and Silverado Drive, both private roads providing connection south to the previous phases of the Hillbrook Estates development. Silverado Drive provides access on to Cemetery Road, while Elm drive access Autumn Road, which provides access to Cemetery and Old Mill Roads. Cemetery Road and Old Mill Road are County owned and maintained and have an asphalt surface. Elm Drive is paved with an asphalt surface, while Silverado Drive is unpaved. Elm and Silverado Drive will be extended north through the subdivision, and a new private road, Maple Drive, will provide east-west access through the subdivision. The developer has proposed building Maple Drive, and Silverado and Elm Drive to the intersection with Maple Drive, to County standard with asphalt surfacing. Building the full length of Silverado, from the intersection with Autumn Road to the north terminus of the subdivision, and Elm from the intersection with Maple to the north terminus of the subdivision will ensure continuation of existing streets and provide access to Lot 40 Amended in the event of its subsequent subdivision, as well as provide more defined boundaries for future development. No sidewalks, curb, or gutter is proposed; drainage will be provided by roadside swales per DEQ review and approval.

Lot 40 Amended will utilize existing access to Old Mill Road, as well as have access via Elm Drive and Silverado Drive. The applicant has submitted justification for the request based on Lot 40 containing the developer's own home with existing access to Old Mill Road, no intentions to further develop Lot 40, and the elimination of two short dead-end streets. It was also stated that the provision of easements would ensure the road would be completed in the event of future development. In reviewing the applicants request, **staff has determined that not all variance criteria as identified in the subdivision regulations was met thus resulting in recommended denial of the request.**

Ray opened the public hearing for public comment.

Summary of Public Comment:

Travis West stated that it was never the intention to pave to the end of the property lines. The unpaved portion of the road will be an easement. Travis also said that paving to the property line would cause a problem with snow melt. Travis reiterated that it was simply missed by himself and the developer that paving to the property line was a condition of approval by both the Planning Board and the County Commission.

Myron Gross addressed the board that he did not know that it was a requirement to pave to the property line. Myron stated that by paving to the property line would cause a hazard of people ending up in Lot 40 which is an alfalfa field. He also said that the water and sewer lines would be compromised if he was required to pave, stating that he was to provide an easement to the lots north of Lot 40 which were parceled into 10 acre lots for development many years ago. Myron

also said that paving would result in increased HOA fees and maintenance as unused pavement breaks down quicker than pavement that is driven on regularly.

Lynn Johnson addressed the board on behalf of the HOA. She had submitted to the Planning Department a letter that was in support of the variance that had been signed by members of the HOA. Lynn stated that the HOA members were concerned about future costs and maintenance if the roads were paved to the terminus of the property line.

With no further comments, Ray closed the public hearing.

Summary of Board Discussion:

Steve led the discussion by stating that he felt the variance request “made sense”. Gary agreed that the variance should be granted and didn’t think the HOA should assume the cost of the maintenance. Curtis stated that he agreed that the variance should be granted but that the board needed to follow the rules of the Subdivision Regulations. Forrest informed the board that they would need to tie their recommendation back to the findings. Jerry stated that he understood the applicant’s desire to not want to pave the roads but was concerned about following the Subdivision Regulations. Curtis suggested going line by line through the criteria and modify their findings and the board recommended as follows:

- (1) The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to other property; *Met. There will be no detriment to the public health, safety, or welfare, or injury to adjoining property if the roads are not built north of Maple Drive.*
- (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property; *Met. There is no desire and there was never intent to build Elm and Silverado north of Maple Drive. The road is not needed as legal and physical access is still provided to all lots within the subdivision, so this is a unique situation and not precedence-setting.*
- (3) There are special and unusual circumstances or conditions affecting said property such that the strict application of the regulations from which the variance is requested would deprive the owner of reasonable use of said property and is not the mere grant of a privilege, or because of particular environmental features or characteristics (which may include viewsheds, specimen trees, wetlands, historic sites, etc.), physical surroundings, shape, or topographical conditions of the specific property involved or the nature of adjoining properties warrant relief from the standard in question; *Met. There is no need to disturb additional land when the roads are not needed.*
- (4) The variances will not in any manner vary the provisions of any other regulations, ordinances, or plans adopted by the AGB; *Met. There are no other identified regulations with similar requirements.*
- (5) The variance is necessary for the preservation and enjoyment of a substantial property right of the owner; *Met. Finishing the road may create a safety issue. Granting the variance would prevent unlawful access to Lot 40 Amended.*
- (6) The granting of the variance would not be in conflict with the intent of the subdivision and platting provisions of these Regulations; *Met. All other lots have legal and physical access,*

meeting the requirement of the Subdivision Regulations and state law.

- (7) The hardship is not a result of the applicant's own actions or from previous actions of the applicant; *Met. There was a misunderstanding of the language of Condition #11.*
- (8) The granting of the variance would not be in conflict with the general purpose and intent of Growth Management Plans of Columbus and Stillwater County, any zoning regulations, or any other applicable ordinances and resolutions of the AGB; *Met.*
- (9) The subdivision would be better designed if the variance were granted; *Met. Granting the variance would eliminate a potential safety concern of two dead-end roads.*
- (10) The requested variance is the minimum variance needed; *Met. Granting of the variance would be the minimum necessary to prevent any legal access issues to the lots.*
- (11) The variance will not cause an increase in public costs; *Met.*

Conditions of Approval:

The Planning Board recommends the following conditions of approval for the variance:

- 1. To ensure the access and utility easements are kept accessible, there shall be a notation on the final plat stating that no development is allowed within the utility and access easements, as shown on the plat, except what is authorized under the terms of said easements.

Bob made a motion to approve the variance based on the findings of facts as changed and condition number one, Gary seconded. With all in favor; motion passed.

IV. OLD BUSINESS:

A. Board Member Dennis Gerke Resignation Letter:

Christine notified the Board that Dennis had submitted his resignation letter and that the vacancy was being advertised.

B. Subdivision Regulations

The Board tabled going through more of the Subdivision Regulations until next month as the meeting was running late.

V. ADJOURN: Steve made a motion to adjourn the meeting at 8:45p.m., Gary seconded; motion passed.

The next meeting will be on November 3, 2021 at 7:00 p.m. at the Pavilion.

Christine Baker, Planning